P.R. No. 2937/05
Presented by Shri D.K. Gupta
dated 13/9/05

Division Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. NO. 1156 OF 2005.

APPELLANT :- Raipur Development Authority, Through Chairman, Raipur (M.P.) (Now Chhattisgarh)

VERSUS

RESPONDENT :- Sarin Construction Company, Raipur (Chhattisgarh).

APPEAL UNDER SECTION 37 (1) (b) OF ARBITRATION AND CONCILIATION ACT 1996.

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HIGH COURT OF CHHAGGISGAR AT BILASPUR

Misc.Appeal No. 1156/2005

Raipur Development Authority, Through Chairman, Raipur (M.P.) (Now Chhattisgarh)

Vs.

Sarin Construction Company, Raipur (Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble the Chief Justice

Sd/-
Chief Justice

Post for Judgment on 01.03.2006

Sd/-
Dilip RaoSaheb Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.No.1156/2005

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

APPELLANT : Raipur Development Authority, Through Chairman, Raipur (M.P.) (Now Chhattisgarh)

Versus

RESPONDENT : Sarin Construction Company, Raipur (Chhattisgarh)

Shri H.B. Agrawal, Sr. Counsel with Ms. Shipra Biswas for the appellant.

Shri Satish Agrawal, Advocate with Shri Sunil Otwani for the respondent.

JUDGMENT

(Delivered on 1.3.2006)

The following judgment of the Court was delivered by **Dilip Raosaheb Deshmukh, J.**

Being aggrieved by the judgment dated 3.9.2005 delivered by learned District Judge, Raipur whereby the application under Section 34 of The Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for setting aside the arbitral award dated 11.12.1998 was dismissed, the appellant has preferred this appeal under Section 37(1)(b) of the Act.

2. Brief facts are that under contract No.378, dated 15.1.1993 between the appellant and the respondent for construction of 6 H.I.G., 18 number of 'I' type and one officer bungalow in Sector-1, Devendra Nagar, Raipur, the work was to be completed by the respondent herein within 18 months i.e. before 14.8.1994. However, the work could be completed only on 31.07.1995 by the respondent. The respondent did not seek any extension of time for completion of work. The respondent claimed damages which was refused by the appellant. Thus, a dispute arose between the parties. The matter was referred to an Arbitrator appointed by the Court vide letter dated 13.4.1998 in Civil Suit No.11-B/1997. The Arbitrator after considering the rival claims, passed an award of Rs. 15,70,316/- in favour of the respondent. The appellant preferred an application under Section 34 of the Act before the learned District Judge, Raipur for setting aside the award dated 11.12.1998 on various grounds, which was dismissed by the impugned judgment. Hence, this appeal.

3. Shri H.B.Agrawal, learned senior advocate, appearing for the appellant has assailed the impugned judgment only on two grounds. Referring to para 35 of the impugned judgment, he pointed out that there was a clear computation error which was wholly ignored by the learned District Judge. Secondly, it was argued that no opportunity was given to the appellant by the learned Arbitrator or by the learned District Judge to lead evidence. No other point was urged by the learned senior counsel.

4. On the other hand, learned counsel for the respondent while opposing the arguments of the learned counsel for the appellant argued in support of the impugned judgment by contending that any computation error could be corrected by making a request to the Arbitral Tribunal by any party under Section 33 of the Act. Regarding the second contention of the appellant's counsel, our attention was drawn to para 8 of the arbitral award which shows that though opportunity was given to the respondent (appellant herein) to file documents and to lead evidence by way of affidavits, the representative of the appellant did not avail of the same. Furthermore, the order sheet dated 17.8.2005 of the Civil Suit No.26-A/2005 shows that despite giving opportunity, the appellant did not adduce any evidence even before the learned District Judge. On these grounds, it was prayed that the appeal be dismissed.

5. Having heard the rival submissions and after going through the record, we find that this appeal has no merit. Confining ourselves to the grounds of challenge, we are of the considered opinion that the arbitral award could not be set aside merely on the ground of a computation error. Under Section 33 of the Act, a remedy was available to the appellant. The Arbitral Tribunal under sub-clause (2) of Section 33 of the Act was competent to correct the computation error, if any. The appellant having not availed of the above remedy, cannot be permitted to make any grievance in this appeal. In so far as the second argument of the learned counsel for the appellant is concerned, it needs to be noticed that para 8 of the arbitral award clearly shows that opportunity was given to the parties to lead evidence by way of affidavits, but, the representative of the appellant

did not choose to cross-examine the respondent on his affidavit. Thus, it is not correct to state that no opportunity to lead evidence was given by the Arbitrator to the appellant. Order sheet dated 17.8.2005 passed in Civil Suit No.26-A/2005 also shows that despite giving opportunity, the appellant did not adduce any evidence even before the learned District Judge.

6. It was also contended by the learned counsel for the appellant that the respondent herein did not seek any extension of time for completing the works entrusted to him under the contract whereupon a fine of Rs.2500/- was imposed on him by the appellant. However, the copy of the note sheet dated 7.12.1995 on which reliance was placed only shows that this act of the appellant was wholly an unilateral act and did not show that the respondent was given any opportunity of being heard before imposition of fine, if any. This argument of the appellant must therefore also fail.

7. We therefore find no merit in this appeal and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani